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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/870,614	05/31/2001	Scott J. Broussard	AUS920010265US1	1779
35617	7590	04/05/2005	EXAMINER	
DAFFER MCDANEIL LLP			BONSHOCK, DENNIS G	
P.O. BOX 684908			ART UNIT	
AUSTIN, TX 78768			PAPER NUMBER	
			2173	
DATE MAILED: 04/05/2005				

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/870,614
Filing Date: May 31, 2001
Appellant(s): BROUSSARD, SCOTT J.

Kevin L. Daffer (reg. 34,146)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12-20-04.

TL

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims of Group I and of Group II do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

4,951,229

DiNicola

8-1990

Sun Microsystems, Mixing Heavy and Light components, 2/98, volume 3, no.4, swing version 1.0, hereinafter referred to as Fowler.

Sun Microsystems, Introducing swing, 2/98, volume 3, no.4, swing version 1.0 hereinafter referred to as SUN.

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 5, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by DiNicola et al., Patent #4,951,229, hereinafter DiNicola. This rejection is set forth in a prior Office Action, mailed on 8-13-04.

Claims 3, 4, and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over DiNicola and Fowler, *Mixing Heavy and Light Components*. This rejection is set forth in a prior Office Action, mailed on 8-13-04.

Claims 11-13, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over DiNicola and Sun Microsystems, *Introducing Swing*, hereinafter Sun. This rejection is set forth in a prior Office Action, mailed on 8-13-04.

Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over DiNicola, Fowler, and Sun. This rejection is set forth in a prior Office Action, mailed on 8-13-04.

Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over DiNicola. This rejection is set forth in a prior Office Action, mailed on 8-13-04.

(11) Response to Argument

GROUP I:

With respect to the group of claims including Claims 1-11, 20, and 21, the Appellant's arguments are focused on the limitations regarding the "composite display image may be presented to a display buffer before it is forwarded to the display". More specifically, as stated from representative Claim 1, the limitation argued is:

wherein during a second mode the images are compiled as a combination image of at least one of said image drawn over at least another of said images and presented to the buffer before being forwarded to the display.

Since the interpretation of the limitation is the basis for the arguments, the Examiner's interpretation is now given. The Examiner asserts the limitation is first of all part of two wherein statements where either, both, or neither are required by the claim language, as it is not positively recited as being part of the application program. Secondly, the statement "presented to a buffer before being forwarded to the display" does not limit the claim to present it to the buffer after compiling the images, but only to

present it to the buffer at some time, before transmission to a display. Where a buffer is defined as an area of memory that temporarily stores data to be transferred. As stated in the eighth paragraph of MPEP 2101[R2].II.C.,

"Office personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023,1027-28 (Fed. Cir. 1997)."

Based on the interpretation of the claim limitations being argued, the Examiner will now explain how the teachings of the reference DiNicola et al. hereinafter DiNicola, are within the scope of these limitations.

DiNicola teaches, in column 2, line 59 through column 3, line 16, the use of several different buffers used in the display of an image. DiNicola teaches, in column 2, line 59 through column 3, line 16, specifically column 3, lines 10-13, a system that can be configured to either send images to the display separately or to combine two or more of the images and send them as a composite display image. DiNicola teaches, in column 3, lines 62-68 and column 5, lines 18-32, buffering the images before sending to the display. An example of DiNicola's teaching is given in column 5, lines 32-56, referencing figure 6. The example shows how multiple images (tree, house, and ball) that are individuals to begin with can be combined to form a composite image before being transferred to a display.

The examiner will now address the individual arguments and statements made by the Appellant.

Issue 1:

From page 7 of the Appeal Brief, from the fourth paragraph, the Appellant argues "DiNicola does not disclose that the composite display image may be presented to a display buffer before it is forwarded to the display, as taught in present claims 1 and 5".

The examiner contends that DiNicola does show a composite display image where they further contemplate the use of a buffer before being transmitted to a display (see column 3, lines 62-68 and column 5, lines 18-32). It is further noted that the claim is not limited to presenting to a buffer as a composite image, nor even requiring the second mode being required.

From pages 7 and 8 of the Appeal Brief, from the fifth paragraph of page 7, the Appellant argues "DiNicola, however, cannot be considered equivalent to the presently claimed "combination image", since DiNicola's image mixing process is performed downstream of the memory buffers".

The examiner contends that the claim as presently written only states that images are presented to a buffer before being forwarded to the display. DiNicola

teaches, in column 3, lines 62-68 and column 5, lines 18-32, buffering the images before sending to the display.

From page 8 of the Appeal Brief, from the first paragraph, the Appellant argues "DiNicola does not disclose the result of the image mixing process may be stored within memory buffers or within any other memory buffer before the composite display image is forwarded to the display".

The examiner contends that the claim as presently written only states that images are presented to a buffer before being forwarded to the display and not necessarily that the composite display image may be stored in memory buffers. DiNicola teaches, in column 3, lines 62-68 and column 5, lines 18-32, buffering the images before sending to the display, and further contemplates the use of a buffer for storing the composite image before being transmitted to a display (see column 3, lines 62-68 and column 5, lines 18-32).

From page 8 of the Appeal Brief, from the second paragraph, the Appellant argues "the graphical display of DiNicola does not include an intermediate buffer, nor is there sufficient motivation within DiNicola that would enable one skilled in the art to modify the display system of DiNicola to include an intermediate buffer".

The examiner contends that DiNicola teaches, in column 3, lines 62-68 and column 5, lines 18-32, buffering the images before sending to the display, and further

contemplate the use of a buffer for storing the composite image before being transmitted to a display (see column 3, lines 62-68 and column 5, lines 18-32). DiNicola presents the ability to omit this intermediate buffer as an advantage over prior art. It is further noted that the claim is not limited to presenting to a buffer as a composite image, nor even requiring the second mode being required.

From page 8 of the Appeal Brief, from the third paragraph, the Appellant argues "DiNicola describes the intentional absence of an intermediate frame buffer as an advantage over the prior art display system".

The examiner contends that this contemplation of the buffer existing is sufficient enough to assert that a buffer can be located at this post compilation location.

From page 9 of the Appeal Brief, from the third paragraph, the Appellant argues "DiNicola would still lack the teaching or suggestion for enabling the buffering capability during a first mode and disabling the buffering capability during a second mode".

The examiner contends that DiNicola does shows in column 2, line 59 through column 3, line 16, specifically column 3, lines 10-13, a system that can be configured to either send images to the display separately or to combine two or more of the images and send them as a composite display image, and further, when combining images DiNicola contemplates the use of a buffer for storing the composite image before being transmitted to a display (see column 5, lines 23-25). This claim, as written, only requires one or the other (enable or disable).

Issue 2:

From page 11 of the Appeal Brief, from the fourth paragraph, the Appellant argues "There is no motivation to modify or combine the teachings of DiNicola and Fowler to provide the presently claimed display system and software components".

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the use of Java would allow for portability of the image display system, this would prove useful if the remote system was run on a different operating system, and because Frame, Panel, and Button images are images that are frequently transferred to displays.

From page 12 of the Appeal Brief, from the second paragraph, the Appellant argues "Fowler provides absolutely no teaching or suggestion for a display buffer, buffering of images, or any means for enabling/disabling a display buffer".

The examiner contends that Fowler is not relied upon for this limitation only for its use of Java programming language, implementing display components.

From page 12 of the Appeal Brief, from the forth paragraph, the Appellant argues that the Examiner has “failed to adequately support and/or establish a prima facie ground of obviousness”.

In response to applicant's argument that the examiner has failed to adequately support and/or establish a prima facie ground of obviousness, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). It is further noted that implementation of a GUI using a different programming language than that disclosed, is well known in the art.

Issue 3:

From page 13 of the Appeal Brief, from the fourth paragraph, the Appellant argues that DiNicola and Sun disclose “a software component, which is configured to enable or disable buffering of a sequence of images as a combination image before the combination image is sent to a display”.

The examiner contends Sun is not relied upon for this limitation only for it's use of Java programming language, implementing display components. DiNicola does shows in column 2, line 59 through column 3, line 16, specifically column 3, lines 10-13, a system that can be configured to either send images to the display separately or to combine two or more of the images and send them as a composite display image, and further, when combining images DiNicola contemplates the use of a buffer for storing the composite image before being transmitted to a display (see column 5, lines 23-25). This claim, as written, only requires one or the other (enable or disable).

From page 14 of the Appeal Brief, from the second paragraph, the Appellant argues "There is no motivation to modify or combine the teachings of DiNicola and Sun to provide the presently claimed software component".

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the use of Java would allow for portability of the image display system, this would prove useful if the remote system was run on a different operating system.

From page 15 of the Appeal Brief, from the third paragraph, the Appellant argues that the Examiner has “failed to adequately support and/or establish a prima facie ground of obviousness”.

In response to applicant’s argument that the Examiner has failed to adequately support and/or establish a prima facie ground of obviousness, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). It is further noted that implementation of a GUI using a different programming language than that disclosed, is well known in the art.

GROUP II:

With respect to the group of claims including Claims 12-19 and 22, the Appellant’s arguments are focused on the limitations regarding the “enabling or disabling buffering of a graphical representation of the object to a memory storage area prior to displaying the graphical representation”. More specifically, as stated from representative Claim 12, the limitation argued is:

enabling or disabling buffering of said graphical representation during runtime as directed by the application program

Since the interpretation of the limitation is the basis for the arguments, the Examiner's interpretation is now given. The Examiner asserts that the claim recites alternative language allowing for either or the enabling or disabling of the buffering. Where a buffer is defined as an area of memory that temporarily stores data to be transferred. As stated in the eighth paragraph of MPEP 2101[R2].II.C.,

"Office personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023,1027-28 (Fed. Cir. 1997)."

Based on the interpretation of the claim limitations being argued, the Examiner will now explain how the teachings of the reference DiNicola et al. hereinafter DiNicola, are within the scope of these limitations.

DiNicola teaches, in column 2, line 59 through column 3, line 16, the use of several different buffers used in the display of an image. DiNicola teaches, in column 2, line 59 through column 3, line 16, specifically column 3, lines 10-13, a system that can be configured to either send images to the display separately or to combine two or more of the images and send them as a composite display image. DiNicola teaches, in column 3, lines 62-68 and column 5, lines 18-32, buffering the images before sending to the display. An example of DiNicola's teaching is given in column 5, lines 32-56, referencing figure 6. The example shows how multiple images (tree, house, and ball) that are individuals to begin with can be combined to form a composite image before being transferred to a display.

The examiner will now address the individual arguments and statements made by the Appellant.

From page 17 of the Appeal Brief, from the first paragraph, the Appellant argues "DiNicola does not teach or suggest that memory buffers could be disabled in certain circumstances".

The examiner contends that DiNicola does shows in column 2, line 59 through column 3, line 16, specifically column 3, lines 10-13, a system that can be configured to either send images to the display separately or to combine two or more of the images and send them as a composite display image, and further, when combining images DiNicola contemplates the use of a buffer for storing the composite image before being transmitted to a display (see column 5, lines 23-25). Where when the images are not combined there is no subsequent buffering.

From page 17 of the Appeal Brief, from the third paragraph, the Appellant argues "There is no motivation to modify or combine the teachings of DiNicola and Sun to provide the presently claimed computer readable store device or method".

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the

references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the use of Java would allow for portability of the image display system, this would prove useful if the remote system was run on a different operating system.

From page 18 of the Appeal Brief, from the first paragraph, the Appellant argues "DiNicola cannot be modified with the capability for enabling an disabling memory buffers, since such modification would not allow the graphical display system of DiNicola to support both bit encoded and multi-plane lateral bit encoding techniques".

DiNicola does shows in column 2, line 59 through column 3, line 16, specifically column 3, lines 10-13, a system that can be configured to either send images to the display separately or to combine two or more of the images and send them as a composite display image, and further, when combining images DiNicola contemplates the use of a buffer for storing the composite image before being transmitted to a display (see column 5, lines 23-25). Where when the images are not combined there is no subsequent buffering. Therefor the contemplated buffer is located after the planes.

From page 19 of the Appeal Brief, from the first paragraph, the Appellant argues that the Examiner has "failed to adequately support and/or establish a prima facie ground of obviousness".

In response to applicant's argument that the Examiner has failed to adequately support and/or establish a prima facie ground of obviousness, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). It is further noted that implementation of a GUI using a different programming language than that disclosed, is well known in the art.

Issue 4:

From page 20 of the Appeal Brief, from the 1 paragraph, the Appellant argues "DiNicola, Fowler, and Sun each fail to disclose a method of displaying an object by enabling or disabling buffering of a graphical representation of the object".

The examiner contends that DiNicola does shows in column 2, line 59 through column 3, line 16, specifically column 3, lines 10-13, a system that can be configured to either send images to the display separately or to combine two or more of the images and send them as a composite display image, and further, when combining images DiNicola contemplates the use of a buffer for storing the composite image before being transmitted to a display (see column 5, lines 23-25). Where when the images are not combined there is no subsequent buffering.

From page 20 of the Appeal Brief, from the fourth paragraph, the Appellant argues there is no motivation to modify or combine the teachings of DiNicola, Fowler, and Sun to provide the presently claimed method".

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the use of Java, as in Fowler and Sun would allow for portability of the image display system, this would prove useful if the remote system was run on a different operating system.

From page 20 of the Appeal Brief, from the sixth paragraph, the Appellant argues that the Examiner has "failed to adequately support and/or establish a prima facie ground of obviousness".

In response to applicant's argument that the Examiner has failed to adequately support and/or establish a prima facie ground of obviousness, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined


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teachings of the references would have suggested to those of ordinary skill in the art.

See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). It is further noted that implementation of a GUI using a different programming language than that disclosed, is well known in the art.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Dennis G. Bonshock
March 31, 2005


RAYMOND J. BAYERL
PRIMARY EXAMINER
ART UNIT 2173

Raymond J. Bayerl (conferee)
March 31, 2005


John W. Cabeca
Supervisory Patent Examiner
March 31, 2005


Joseph H. Feld
Supervisory Patent Examiner
March 31, 2000

CONLEY ROSE, P.C.
P.O. BOX 684908
AUSTIN, TX 78768